HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 11 OF 2007

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Between:

Ch. Gopinath

.....
Appellant

AND

The State of Andhra Pradesh,
Rep. by its Secretary,
Revenue Department,
Hyderabad & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri D.V. Sitharama Murthy

Counsel for the respondents : Government Pleader for Revenue

Dated: 04.01.2007

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 29.11.2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for incorporating his name in the revenue records in relation to land measuring Ac.1.70 cents comprised in Survey No.143/4 of Paradeshipalem Village, Visakhapatnam Mandal and District.

The appellant, who retired from Indian Navy as Leading Seaman is said to have been assigned Ac.1.73 cents of dry land comprised in Survey No.143 of Paradeshipalem Village, Visakhapatanam District in 1989. Mandal Revenue Officer, Visakhapatnam is said to have issued D-form patta in his favour on 28.08.1989. The appellant claims to be in possession of the land for last more than 16 years and planted about 100 teak plants and 120 coconut plants. In 1996, he got electric connection, got dug up a service bore well up to a depth of 100 feet and installed submersible motor. Thereafter, he is said to have planted 120 mango, 10 sapota, 10 guava, 5 lemon, 5 drumstic, 5 amla plants. On 06.02.2002, he submitted an application to the Mandal Revenue Officer for incorporation of his name in the revenue records and paid necessary charges. In September 2002, he applied for issue of FMB sketch map, but the same was not made available. He continued to pursue the

application made for incorporation of his name in the revenue records till November 2006 and then filed writ petition under Article 226 of the constitution of India for issue of a mandamus to the respondents to do the needful and issue pattedar pass book and title deed book in accordance with the provisions contained in Andhra Pradesh Records of Rights in Land and Pattedar Passbooks Act, 1971. Along with the writ petition, the petitioner annexed large number of documents including D-form patta issued by Mandal Revenue Officer, Visakhapatnam on 28.08.1989.

The learned Single Judge did not call upon the respondents to file affidavit to controvert the averments contained in the appellant's affidavit, but dismissed the writ petition by relying on the oral statement made by the Assistant Government Pleader for Revenue, that no patta was granted in respect of the land in question and the pattar produced by the petitioner (appellant herein) before the Court was never issued by the Mandal Revenue Officer. This is evinced from the following extracts of the order under challenge:

> " The matter was initially heard on 22.11.2006 and to enable the learned Assistant Government Pleader for Revenue (General-A) to get instructions, the matter was adjourned. Today, after getting instructions, the learned Assistant Government Pleader submits that on verification it is found that no patta was granted in respect of the land in Survey

No.143/4 and that the patta produced by the petitioner before this Court was never granted by the Mandal Revenue Officer.

Therefore, instead of keeping the matter pending, the writ petition is dismissed observing that the fourth respondent should inform the petitioner about the existing position immediately. No costs."

We have heard Shri D.V. Sitharama Murthy, learned counsel for the appellant and learned Government Pleader for Revenue. In our opinion, the order under challenge is liable to be declared as vitiated by an error of law apparent on the face of the record because the learned Single Judge declined relief to the appellant without adverting to the factual matrix of the case and the issue raised by the appellant. The question as to whether the appellant is entitled to have his name entered in the revenue records on the basis of D-form patta could not have been summarily answered by the learned Single Judge in negative and that too on the basis of an oral statement made by the Assistant Government Pleader. In our considered view, the learned Single Judge was not justified in discarding the D-form patta issued by the Mandal Revenue Officer in favour of the appellant, by presuming that the same is not a genuine document.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition is admitted for final hearing. Counter-affidavit be filed

by the respondents within eight weeks. Thereafter, the writ petition be posted for hearing before an appropriate Bench as per roster.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

04.01.2007
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